

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
No. 2:13-CV-36-D

JAMES B. ANGELL, Chapter 7 Trustee, )  
)  
Appellant, )  
)  
v. )  
)  
MEHERRIN AGRICULTURAL & )  
CHEMICAL COMPANY, )  
)  
Appellee. )

**ORDER**

James B. Angell, Chapter 7 Trustee for Tanglewood Farms, Inc. of Elizabeth City, appeals the bankruptcy court's order of May 1, 2013, granting the motion to dismiss of Meherrin Agricultural & Chemical Company ("MACC") [D.E. 1]. See Fed. R. Civ. P. 12(b)(6). The bankruptcy court held an extensive hearing on March 1, 2013, concerning MACC's motion to dismiss. See [D.E. 1-1] 1. On May 1, 2013, the bankruptcy court entered a thorough order. See [D.E. 1-1]. Essentially, the bankruptcy court concluded that counts one, two, three, and four in the trustee's complaint are barred by the equitable doctrines of estoppel and waiver because the trustee is bound by the actions of the debtor-in-possession, upon which MACC relied, and that count five is barred by judicial estoppel. See id. 11-24. Alternatively, the bankruptcy court concluded that counts two and three in the trustee's complaint fail to state a claim upon which relief can be granted for avoidance and recovery of preferential transfers because the trustee failed to plead facts sufficient to plausibly support the inference that MACC is either a statutory or nonstatutory insider of the debtor. See id. 24-30. Finally, the bankruptcy court concluded that because it had specifically authorized the post-petition distribution to MACC from the proceeds of the sale of the debtor's granary facility, the distribution was not subject to avoidance. See id. 30-32.

The court has reviewed the record and the parties' briefs on appeal. The bankruptcy court correctly analyzed the complaint, the record, and the governing law. Accordingly, the judgment of the bankruptcy court is AFFIRMED.

SO ORDERED. This 6 day of January 2014.

  
JAMES C. DEVER III  
Chief United States District Judge